IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2476 OF 1993

Mr.Bellur Subbaraya Hirianniah. ... Petitioner.

V/s.

1. S.K.Laul,
2. S.C.Tiwari,
3. C.M.Betgeri,
4. Union of India,
5. Prakash V. Changwani,
6. Ranibai V. Changwani,
7. Deepti P. Changwani,
8. Mukesh P. Changwani,
9. T.A.Pai Co-operative Housing Society Limited. ... Respondents.

Girish Kulkarni with Milind Shewale i/b.
Ghanekar & Co. for the petitioner.

M.I.Sethna, senior counsel with Parag Vyas
for respondent Nos.1 to 4.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

RESERVED ON : 11th October 2005.

PRONOUNCED ON : 27th October 2005.

P.C. :
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1. The subject matter of this petition filed under Article 226 of the Constitution of India is the order dated 24th February, 1993 passed by the Appropriate Authority under section 269UD(1) of the Income Tax Act, 1961 ("Act" for short), incorporated at Exh.F to the petition; whereby right of

pre-emptive purchase has been exercised by the Central Government i.e. respondent No.4 with respect to Flat No.18, 7th floor, 'Jeevandhara', T.A.Pai Co-operative Housing Society, Bandra (W), Mumbai- 400 050 owned and held by the petitioner as member of the society.

2. When this petition came up for hearing, learned counsel for the petitioner submitted that he does not want to press points raised in the petition except with respect to the deduction made from apparent consideration and retention thereof by respondent No.4 constituting an amount of Rs.2,00,000/- plus Rs.50,000/-. However, during the course of hearing, learned counsel appearing for the respondents - Revenue agreed to pay Rs.2,00,000/- to the petitioner as such petitioner at this stage again gave up his claim to this extent and made a statement that he does not desire to challenge the order to the extent it directs retention of Rs.2,00,000/-. He, however, reiterates his claim to get back Rs.50,000/-, which, according to him, has been wrongly withheld by the Appropriate Authority or respondent No.4 - Union of India by way of share of the petitioner on account of transfer charges payable to the society.

3. Mr.Kulkarni, learned counsel for the petitioner in support of his above solitary claim submits that so far as payment of transfer fee in the sum of Rs.50,000/- in respect of subject property is concerned, at no point of time the Central Government got the subject property transferred in their name pursuant to the pre-emptive right of purchase exercised by them under section 269UD of the Act. He, therefore, submits that the Central Government was not justified in retaining the amount of Rs.50,000/- on this account.

4. Mr.Kulkarni further pointed out that after exercise of right of pre-emptive purchase, since there was no interim stay in favour of the petitioner, the respondent No.4 has auctioned the subject property by public auction conducted by the Chief Commissioner of Income Tax on 18th May, 1993 and sold it to the auction purchaser.

5. Mr.Kulkarni, submits that in the auction proclamation, it was, specifically, mentioned, by way of one of the terms of auction that, the auction purchaser and the Central Government shall share

society's transfer charges in the ratio of 50:50. In other words, Rs.50,000/- were to be paid by the Central Government as their share towards transfer fee to the Society to transfer the subject property in the name of the auction purchaser. Pursuant to the auction conducted on 18th May, 1993, the property, which was purchased by the auction purchaser, came to be transferred in the name of the auction purchaser in record of Society at the request of the Central Government. In that view of the matter, since the property was directly transferred in the name of the auction purchaser by the Central Government and since they on their own volition agreed to share the transfer fee or charges of the society with the auction purchaser in the ratio of 50:50, there is no justification on the part of the Central government to retain an amount of Rs.50,000/- deducted from the amount of apparent consideration by way of share of the petitioner towards transfer charges of the society.

6. Mr.Sethna, learned senior counsel, appearing for the contesting respondents / Revenue tried to justify deduction and retention of amount of Rs.50,000/-. However, he could not take his submission to the logical end.

7. Having heard learned counsel for the rival parties, we see no justification on the part of respondent No.4 to retain the amount of Rs.50,000/- subtracted from the apparent consideration payable to the petitioner. The Central Government did not get the subject property transferred in their own name. Thus, they were not required to pay transfer charges for getting the property transferred from the name of the petitioner to their name. The second sale, effected by the Central Government through public auction, resulted in transfer, where the Central Government had agreed to share transfer charges to the extent of Rs.50,000/-. The petitioner, therefore, cannot be made to pay transfer fee of the society for effecting transfer in the name of auction purchaser resulting from second sale i.e. auction sale. In this view of the matter, in our opinion, the petitioner is entitled to claim Rs.50,000/-.

8. At this stage learned counsel for the petitioner pressed for amount of interest on Rs.50,000/- withheld by respondents-Revenue. The claim of the petitioner for interest has been strongly opposed by learned counsel for respondent - Revenue.

9. The auction purchaser has purchased this property in auction in the year 1997 and the property in the record of the society appears to have been transferred in the year 1997 itself. The liability of the petitioner was not free from doubt. Therefore, the action of the respondents-Revenue cannot be said to be wholly unjustified. Hence, we do not think the petitioner would be entitled for interest as claimed.

10. In the result, petition is partly allowed. The respondents are directed to refund Rs.50,000/- to the petitioner within a period eight weeks from today, failing which, this amount shall carry interest @ 10% per annum till payment in full and final.

. Rule is made absolute in term of this order with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**